

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rolando Vasquez	Team: Squad #13	CCRB Case #: 202003695	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2020 8:00 PM	Location of Incident: Barclays Center	Precinct: 78	18 Mo. SOL 11/29/2021	EO SOL 5/4/2022	
Date/Time CV Reported Sat, 05/30/2020 12:01 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 05/30/2020 12:01 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Jessica Clinton	17324	960376	SRG 3
2. POM Michael Kovalik	25801	948368	SRG 3
3. POM Harry Kerr	22551	962522	SRG 2
4. Officers			
5. COD Terence Monahan	00000	876747	CD OFF
6. POM Jorge Perez	13859	959886	SRG 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. CPT Joseph Taylor	00000	924542	SRG 3
2. DI Andrew Ventrella	00000	896907	SRG

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers struck § 87(2)(b) with bicycles.	
B. Officers	Force: Officers struck New York State § 87(2)(b) with bicycles.	
C. Officers	Force: Officers struck individuals with bicycles.	
D. Officers	Force: Officers used pepper spray against § 87(2)(b)	
E. Officers	Force: Officers used pepper spray against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F. Officers	Force: Officers used pepper spray against individuals.	
G.POM Harry Kerr	Force: Police Officer Harry Kerr used physical force against § 87(2)(b)	
H.POM Michael Kovalik	Abuse: Police Officer Michael Kovalik threatened individuals with the use of force.	
I.POM Michael Kovalik	Abuse: Police Officer Michael Kovalik threatened § 87(2)(b) with the use of force.	
J.POF Jessica Clinton	Force: Police Officer Jessica Clinton used physical force against § 87(2)(b)	
K.POM Jorge Perez	Abuse: Police Officer Jorge Perez threatened § 87(2)(b) with the use of force.	
L.POM Jorge Perez	Force: Police Officer Jorge Perez used pepper spray against § 87(2)(b)	
M.POF Jessica Clinton	Force: Police Officer Jessica Clinton used physical force against § 87(2)(b)	
N.POF Jessica Clinton	Force: Police Officer Jessica Clinton used pepper spray against § 87(2)(b)	
O.POF Jessica Clinton	Abuse: Police Officer Jessica Clinton threatened § 87(2)(b) with the use of force.	
P.COD Terence Monahan	Force: Chief Terence Monahan authorized the striking of individuals with bicycles.	
Q.COD Terence Monahan	Force: Chief Terence Monahan authorized the use of pepper spray against individuals.	
R.COD Terence Monahan	Force: Chief Terence Monahan authorized the use of force against individuals.	
S.COD Terence Monahan	Force: Chief Terence Monahan authorized the use of force against § 87(2)(b)	

Case Summary

Between May 30, 2020 and June 1, 2020, six reporting non-witnesses, § 87(2)(b) and § 87(2)(b) filed this complaint via the CCRB's website on behalf of § 87(2)(b) and unidentified individuals. On June 1, 2020, § 87(2)(b) filed a duplicate complaint with IAB by e-mail, which was received at the CCRB on June 8, 2020. The investigation subsequently identified § 87(2)(b) as an additional victim. This complaint was added to the Agency's sensitive case list due to media coverage of the incident.

On May 29, 2020, at approximately 8:00 p.m., § 87(2)(b) and § 87(2)(b) attended a Black Lives Matter protest at the Barclays Center in Brooklyn. Officers struck § 87(2)(b) and unidentified individuals with bicycles (**Allegations A-C: Force: § 87(2)(g)**). Unidentified officers used pepper spray against § 87(2)(b) and unidentified individuals (**Allegations D-F: Force: § 87(2)(g)**). PO Harry Kerr of the Strategic Response Group (SRG) used physical force against § 87(2)(b) (**Allegation G: Force: § 87(2)(g)**). PO Michael Kovalik of SRG threatened § 87(2)(b) and unidentified individuals with the use of pepper spray (**Allegations H-I: Abuse of Authority: § 87(2)(g)**). PO Jessica Clinton of SRG used physical force against § 87(2)(b) (**Allegation J: Force: § 87(2)(g)**). PO Jorge Perez of SRG allegedly threatened § 87(2)(b) with the use of force by raising his fists toward her (**Allegation K: Abuse of Authority, § 87(2)(g)**). PO Perez allegedly used pepper spray against § 87(2)(b) (**Allegation L: Force: § 87(2)(g)**). PO Clinton allegedly used physical force against § 87(2)(b) (**Allegation M: Force: § 87(2)(g)**). PO Clinton allegedly used pepper spray against § 87(2)(b) (**Allegation N: Force: § 87(2)(g)**). PO Clinton allegedly threatened § 87(2)(b) with the use of force by raising her fists at her (**Allegation O: Abuse of Authority: § 87(2)(g)**). Chief of Department Terence Monahan authorized the use of force against individuals including the use of bicycles, pepper spray, and physical force (**Allegations P-R: Force, § 87(2)(g)**). Chief Monahan authorized the use of force against § 87(2)(b) (**Allegation S: Force, § 87(2)(g)**). § 87(2)(b) and § 87(2)(b) were not arrested or summonsed as a result of this incident.

Forty-two Body Worn Camera (BWC) videos were received from NYPD Legal (**Board Review 01-32, 69-78**). The footage is in IAs #158-160, 168, 180-187, 221-229, 249-256, 292, and 297-298, 441-450 and summarized in IA#215 (**Board Review 33**). TARU video was received but did not capture the interactions involved in this complaint (**Board Review 34**). Surveillance video from the Barclays Center was received but did not capture the interactions involved in this complaint (**Board Review 35**). In their online complaints, the reporting non-witnesses provided a link to a Twitter post which included a cell phone video taken after the incident in which § 87(2)(b) recounts what happened to her. This video is in IA #16 (**Board Review 51**) and summarized in IA #101.

Findings and Recommendations

Allegation (A) Force: Officers struck New York State § 87(2)(b) with bicycles.

Allegation (B) Force: Officers struck New York State § 87(2)(b) with bicycles.

Allegation (C) Force: Officers struck individuals with bicycles.

Allegation (D) Force: Officers used pepper spray against New York State § 87(2)(b).

Allegation (E) Force: Officers used pepper spray against New York State § 87(2)(b)

Allegation (F) Force: Officers used pepper spray against individuals.

Known facts and general descriptions

§ 87(2)(b) and § 87(2)(b) were contacted by the investigation but declined to provide statements to the CCRB about this incident at this time (see IAs for contact attempts).

In an article posted to § 87(2)(b), § 87(2)(b) provided a statement in which she described that she and § 87(2)(b) were in a section of the protest with several hundred protesters (**Board Review 37**). Officers confronted them with their bicycles and used their bicycles to create a barricade. Officers raised their bicycles by the handlebars, turned the wheels outward, and an officer shoved his bicycle into § 87(2)(b)'s pelvis and lower abdomen. A second wave of officers approached the protesters. One officer put his hands up like he was “giving up a fight.” In a separate video posted to the § 87(2)(b), § 87(2)(b) stated that PO Clinton and her unidentified partner put their fists up as if to fight “us” (**Board Review 51**). Suddenly, § 87(2)(b) was pepper sprayed. Protesters pulled § 87(2)(b) aside and helped her clean her eyes. § 87(2)(b) heard § 87(2)(b) calling her name but she could not see him and did not know what happened to him (**Board Review 37**).

In a video interview on § 87(2)(b), § 87(2)(b) described that officers began giving orders to back up. § 87(2)(b) was compliant and tried to back up and protect protesters behind him. Officers then pushed and pepper sprayed him. § 87(2)(b) was struck in the back with bicycles by officers who were carrying them. § 87(2)(b) was handcuffed. He was later released after nearby NYPD realized who he was (**Board Review 38**).

§ 87(2)(b) and § 87(2)(b) provided statements to other media sources including § 87(2)(b) which were all consistent with the information noted above (**Board Review 39-42**). None of these accounts provided descriptions of or other identifying information for the officers who used their bicycles. (In her public statements, § 87(2)(b) alleged actions taken by PO Clinton; these are addressed later in this report.)

The New York State Attorney General, Letitia James, filed a complaint in the United States Southern District Court of New York against Mayor Bill DeBlasio, NYPD Commissioner Dermot Shea, and Chief of Department Terence Monahan regarding the NYPD's response to the Black Lives Matter protests (**Board Review 43**). Among other incidents, the complaint discusses the allegations involving § 87(2)(b) and § 87(2)(b) (**Board Review 44 contains the relevant section of the complaint**). The complaint alleges that § 87(2)(b) and § 87(2)(b) joined their constituents at the Barclays Center. Officers ordered protesters to move back. § 87(2)(b) who was between a large crowd of protesters and officers, repeated the directive to the crowd. As protesters began to comply, officers pushed their bicycles against the crowd. The bicycles hit § 87(2)(b)'s back and legs and § 87(2)(b)'s lower abdomen and legs. An officer pepper sprayed § 87(2)(b) in the face without provocation. An officer pepper sprayed § 87(2)(b) and protesters around her. § 87(2)(b) was knocked to the ground.

On June 28, 2021, § 87(2)(b) and § 87(2)(b) filed a lawsuit in the United States Eastern District Court of New York regarding this incident. The lawsuit alleges that § 87(2)(b) was moving backwards away from officers, in compliance with

their instructions, when a mass of officers made a barricade with their bicycles in front of her. These officers forcibly and repeatedly rammed their bicycles into § 87(2)(b)'s legs, lower abdomen, and pelvic area. § 87(2)(b) asked the officers what they were doing as she tried to protect her body. The officers did not respond verbally and instead continued to hit § 87(2)(b). The lawsuit further alleges that while § 87(2)(b) was trying to walk away as directed by officers, officers rammed their bicycles into his back, arms, and legs, striking him repeatedly. § 87(2)(b) asked the officers why they were hitting him. The officers did not respond verbally and continued to ram him with their bicycles (**Board Review 79**).

BWC

Six BWC footage requests were submitted to the NYPD Legal Bureau which listed a variety of criteria including the date, time, and location of the protest and the names of officers identified from the roll call and detail roster. These requests returned 32 videos. The search criteria listed by the Legal Bureau for these requests was searches by date, time, and location, and various commands including the 78th Precinct and SRG. The videos capture the protest at the Barclays Center from various locations and a number of these videos were determined to be irrelevant. Two videos described below capture this aspect of the incident in the most clarity.

Starting at the 14:22 minute mark of PO Kerr's BWC video (based on the media player time at the bottom of the screen) (**Board Review 31**), § 87(2)(b) (wearing a neon green shirt) and § 87(2)(b) (standing to the left of § 87(2)(b) wearing a black and white patterned dress) are captured standing in the crosswalk of Flatbush Avenue with their arms linked with each other and other protesters. At 14:35, a bottle is seen in the top left corner of the screen moving toward officers. At 14:42, PO Kerr is standing behind a line of officers wearing green shirts and carrying bicycles. At 14:44, § 87(2)(b) is standing with her left arm raised and holding § 87(2)(b)'s arm. Her right arm is down to her side near the rear of a bicycle carried by an officer who has passed her. Standing in front of § 87(2)(b) is an unknown protester holding a bicycle. An officer wearing a green shirt with chevrons on the sleeve, a bicycle helmet, and carrying a bicycle, lifts the front of his bicycle off the ground and pushes it toward § 87(2)(b)'s legs and lower body. At 14:55, the same officer with the bicycle uses his handheld pepper spray in the direction of a protester standing in front of him with a bicycle. At 14:57, the arm of an officer standing next to the officer with the bicycle is outstretched and deploys his handheld pepper spray. It cannot be discerned where the pepper spray was directed, however the stream of the pepper spray goes in the direction of § 87(2)(b) who has his back turned to the officers, is standing behind § 87(2)(b) and is moving in the opposite direction away from the officers.

The same incident is captured from a different angle in the BWC video from Sgt. Eric Olfano of SRG (**Board Review 21**). At the 14:44 minute mark (based on the media player time at the bottom of the screen), § 87(2)(b) and § 87(2)(b) are visible on the far right of the frame. At 14:47, § 87(2)(b) suddenly turns his torso away from the officers and toward the ground. § 87(2)(b) and § 87(2)(b) continue down the street. At 14:49, the arm of an officer, identified by the investigation as PO Kovalik, is captured holding a handheld pepper spray canister next to the right side of § 87(2)(b)'s head and then next to the left side of his head (addressed below in Allegations H-I). At 14:55, a stream of pepper spray from an unidentified officer moves in the direction of § 87(2)(b) whose back is turned to the officers. Starting at 15:24, the crowd of protesters comes to be alongside vehicles in the street.

NYPD Documents Reviewed

No Threat, Resistance, or Injury Reports were identified related to § 87(2)(b).

or § 87(2)(b) (Board Review 56). Without additional identifying information for the unidentified protesters, specific records related to the use of force against them could not be requested.

The SRG roll call did not note any sergeants (who would have had chevrons on their sleeves) assigned to a bicycle detail (Board Review 65). A detail roster received from Patrol Borough Brooklyn South noted patrol officers but did not note any SRG officers (Board Review 66).

Concurrent Investigations

The NYPD's Internal Affairs Bureau has an open investigation regarding this complaint. IAB did not have any additional subject officers identified in their case. The investigation received press articles and cell phone videos from IAB related to this complaint, and these records did not provide any additional leads regarding officer identification (Board Review 86-93).

Ranking Officers

Chief Terence Monahan, the Chief of Patrol and the highest-ranking NYPD officer on scene at this protest, testified that he arrived at the Barclays Center at about 4:00 p.m., where about 500-1000 protesters had gathered (Board Review 45). At about 6:00 p.m. or 6:30 p.m., Chief Monahan deemed the assembly to be unlawful because protesters had become violent. Protesters had thrown bottles containing unknown liquids, bolts and screws, and other objects at officers. They also set fires and set off fireworks. A recorded dispersal message and verbal commands to disperse were repeated to protesters beginning at 6:30 p.m. Anyone who remained after those warnings were given was subject to arrest for unlawful assembly because the gathering had become a danger to the safety of the public and officers. Chief Monahan issued instructions to SRG, he did not remember specifically to whom, to clear the pavilion in front of the Barclays Center and the adjacent streets. Chief Monahan did not provide SRG with any specific instructions regarding how to do so and did not provide any instructions specifically regarding the use of force. Chief Monahan requested SRG officers to the protest because they are the experts in disorder control. He expected the SRG officers to use their discretion in deciding which of the crowd control tactics they were trained to use, to use to clear the street, and he said these tactics ranged from making arrests to using force, including the use of bicycles, against people who refused to disperse. From Flatbush Avenue and 5th Avenue, which is about a block away from where the interactions involved in this complaint occurred, Chief Monahan observed protesters push officers who gave orders for them to disperse which resulted in numerous arrests. Chief Monahan did not authorize the use of pepper spray against any individuals on Flatbush Avenue and did not see pepper spray be used against anyone on Flatbush Avenue. He did not see any officer push any protester with a bicycle.

Officers Interviewed

Captain Joseph Taylor, Deputy Inspector Andrew Ventrella, PO Clinton, PO Kerr, and PO Kovalik, all of SRG, were interviewed regarding this incident (Board Review 46-50). They all denied using pepper spray against § 87(2)(b) and § 87(2)(b) and they were all unable to identify the subject officer captured in the available BWC video when presented with the video during their interviews. All of these officers denied being equipped with a bicycle and did not see any officer with a bicycle push any protester with a bicycle. The officers all provided the following generally consistent testimony: The protesters at the Barclays Center became violent and threw various objects at officers. A large crowd of protesters assembled in the street on Flatbush Avenue and protesters were ordered via a broadcast on the Long-Range Acoustic Device (LRAD) to disperse. At a certain point in the evening, after a determination had been made that the event was unlawful, officers began making arrests of protesters on Flatbush Avenue for Unlawful Assembly. In the course of making these arrests, protesters pushed and threw objects at officers and refused to comply with lawful orders to leave.

Allegation Recitation and Disposition

The available BWC video captures an unidentified officer using his bicycle against § 87(2)(b) and two officers using their pepper spray against unidentified protesters standing next to § 87(2)(b) and § 87(2)(b). This video, by itself, is insufficient to identify the officers. The received NYPD documents did not aid in identifying these officers. Similarly, no records were identified which documented any use of force against § 87(2)(b) or § 87(2)(b). The identified officers who were interviewed denied participating in or witnessing any of the allegations and could not identify the subject officers captured in the BWC video. In their public statements to the media and in the lawsuit filed in Federal Court, § 87(2)(b) and § 87(2)(b) alleged that they were struck with bicycles repeatedly. Given this, evidence and due to the chaotic scene captured in the video, the investigation could not conclude how many officers used their bicycles against § 87(2)(b) and § 87(2)(b). As noted above, Chief Monahan testified that he ordered officers to clear the street where this incident occurred and that he authorized SRG to utilize various tactics, such as the use of force, to achieve this goal (see Allegations P-S below), though he could not recall who specifically he gave this order to. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (G) Force: Police Officer Harry Kerr used physical force against § 87(2)(b).

§ 87(2)(b)

As noted above, starting at the 14:42 minute mark of the media player timestamp (visible at the bottom of the screen), PO Kerr's BWC video shows an unidentified officer advance toward § 87(2)(b) and § 87(2)(b) with his bicycle (**Board Review 31**). The officer pushes the bicycle into § 87(2)(b). § 87(2)(b) extends her right arm outward toward the officer while her left hand is holding the hand of § 87(2)(b) who is positioned behind her. PO Kerr approaches § 87(2)(b). At 14:46, PO Kerr's arm is captured in front of him. The video does not capture what contact, if any, PO Kerr made with § 87(2)(b) and does not show if he pushed her (for a screen capture of this moment, see **Board Review 80**). The camera becomes obscured momentarily until § 87(2)(b) (wearing a neon green shirt) appears in front of PO Kerr. § 87(2)(b) says, "Don't fucking touch me." § 87(2)(b) steps in front of § 87(2)(b) and says, "Don't put your hands on her."

In Sgt. Olfano's BWC video, at the 14:37 minute mark of the media player timestamp (visible at the bottom of the screen), PO Kerr (wearing a baseball cap and blue face mask) stands in front of Sgt. Olfano before turning around to face the opposite direction (**Board Review 21**). § 87(2)(b) and § 87(2)(b) are visible on the far right of the frame. PO Kerr moves toward the right. At 14:43, PO Kerr extends his left arm toward § 87(2)(b)'s right shoulder, but the video does not show if PO Kerr pushes her (for a screen capture of this moment see with the specific area of interest highlighted, see **Board Review 68**). Other officers then obstruct the view of the camera.

PO Kerr testified that during this aspect of the protest, he and other officers received orders to disperse the crowd that was standing in the street (**Board Review 49**). A dispersal message was broadcast to the protesters to disperse. However, protesters remained in the street. PO Kerr pushed protesters who refused to disperse and who were pushing other officers. Officers carrying bicycles used their bicycles to push the protesters who were not dispersing. The protestors pushed the officers, pushed the bicycles, and grabbed onto the bicycles. After being presented with his BWC

video (described above) during his CCRB interview, PO Kerr testified that he did not remember the particular interaction captured. PO Kerr did not remember if he pushed § 87(2)(b)

The BWC video shows an officer push his bicycle into § 87(2)(b) § 87(2)(b) responds by pushing the bicycle with one hand while holding onto § 87(2)(b) s hand with her other hand. PO Kerr moves toward § 87(2)(b) but due to the rapid movements of the camera and the brevity of this aspect of the incident, the video does not assist in clarifying what physical contact was made by PO Kerr and if PO Kerr pushed or used any other physical force against § 87(2)(b) The available video does not capture what actions, if any, § 87(2)(b) took after she was pushed with the bicycle. § 87(2)(g)

Allegation (H) Abuse of Authority: Police Officer Michael Kovalik threatened individuals with the use of force.

Allegation (I) Abuse of Authority: Police Officer Michael Kovalik threatened New York State § 87(2)(b) with the use of force.

Between the 14:49 and 14:52 minute marks of, Sgt. Olfano's BWC video (visible at the bottom of the screen), an officer is seen extending his right hand, which is holding a handheld pepper spray canister, over § 87(2)(b) s right shoulder (**Board Review 21**). § 87(2)(b) is standing with his back to the officer and his left arm is around § 87(2)(b) who is standing in front of him. § 87(2)(b) is not moving. The officer then moves his right hand over § 87(2)(b) s left shoulder so that the handheld pepper spray canister is next to § 87(2)(b) s head (for screen captures of these moments, see **Board Review 81-82**). An officer in a dark colored uniform is standing behind § 87(2)(b) and two officers with bicycles and wearing green shirts are on the left of the frame standing ahead of § 87(2)(b) in the street. Several protesters are captured in the background ahead of § 87(2)(b) in the street. None of these individuals are captured pushing any officers. As the officer moves his hand over § 87(2)(b) s left side, the officer turns his body toward Sgt. Olfano's BWC. On the upper right of the officer's chest the officer's name is stitched on his shirt and is seen to contain an "OV" and end in "IK." Below the name, the officer is seen to have a number stitched on his shirt ending in "01."

In PO Kovalik's BWC video, at the 14:44 minute mark of the media player timestamp (visible at the bottom of the screen), § 87(2)(b) and § 87(2)(b) are seen standing in the street ahead of PO Kovalik (**Board Review 20**). At 14:44, a blue handheld pepper spray cannister momentarily passes in front of the BWC. The view of the camera becomes obscured by officers in front of PO Kovalik. At 14:49, § 87(2)(b) is standing ahead of PO Kovalik with his back to PO Kovalik. PO Kovalik's shield number is 25801.

PO Kerr's BWC video captures the same moment at approximately the 14:50 minute mark of the media player timestamp (visible at the bottom of the screen) (**Board Review 31**). The video does not show PO Kovalik or his actions. At 14:55, an unidentified bicycle officer uses his handheld pepper spray against a man standing in front of him holding a bicycle (for a screen capture of this moment, see **Board Review 83**). At 14:57, § 87(2)(b) and § 87(2)(b) enter the frame from the left side, with their backs turned to PO Kerr. The video does not capture the unidentified man or any other protester pushing any officers.

Officers may use pepper spray when they believe it is necessary to a) gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, b) prevent individuals from physically injuring themselves, officers, or other persons, c) establish physical control of a subject attempting to flee from arrest or custody, d) establish physical control of an emotionally disturbed person, e) control a dangerous animal, by deterring an attack, to prevent injury to persons or animals present. Pepper spray may not be used on subjects who passively resist. Passive resistance is defined as minimal physical action to prevent a member from performing their lawful duty (for example, failing to comply with a lawful command and standing motionless and/or going limp when being taken into custody). Officers are directed to discharge pepper spray into a subject's eyes for maximum effectiveness, using two, one second bursts, at a minimum distance of three feet. NYPD Patrol Guide, Procedure 221-07 (Board Review 67).

§ 87(2)(g)

In PO Clinton's BWC video, at the 14:55 minute mark of the media player timestamp (visible at the bottom of the screen) (**Board Review 04**), § 87(2)(b) is visible to the right of PO Clinton in the white painted lines of the cross walk with his back turned to officers and standing behind § 87(2)(b). At 15:12, § 87(2)(b) stands in front of other officers with his

back to them and has moved on top of the painted stop line for vehicles on the roadway, near where a black SUV is stopped. By this point, § 87(2)(b) has stopped moving forward. At 15:13, PO Clinton says, “Keep moving. Get out of the street. Go.” PO Clinton extends her right arm forward and pushes § 87(2)(b) in the back. § 87(2)(b) takes a few steps forward. An unidentified individual dressed in black and holding a cardboard sign steps in front of PO Clinton and behind § 87(2)(b). At 15:18, an unidentified individual (it cannot be seen who) says, “We gotta move.” At 15:20, the unidentified individual dressed in black who appears to be a protester, has their left hand at § 87(2)(b)’s waist. Throughout the first 15 minutes of PO Clinton’s BWC video, including up to immediately before she pushes § 87(2)(b) a message which states, “This assembly is unlawful. If you do not disperse you will be subject to arrest” is being broadcast.

PO Clinton testified that she and other officers were ordered by supervisors on scene, she did not remember who, to line up in the street and move protesters onto the sidewalk to keep them from blocking vehicular traffic, which was still trying to get by (**Board Review 48**). Officers gave verbal commands to the protesters to move out of the street. The officers were vastly outnumbered. PO Clinton estimated there were over 1000 protesters in comparison to about 100 officers. In addition, protesters were throwing various objects at officers including plastic and glass bottles. Many members of the crowd remained in the street and did not comply with these commands. Members of the crowd also got close to officers and pushed them. PO Clinton was fearful for her safety due to the large violent crowd. She pushed some protesters who came close to her in order to create separation. Upon reviewing the above section of her BWC video, PO Clinton said she pushed § 87(2)(b) to get him out of the way of the line of officers who were trying to continue forward and for no other reason. She made no other observation of § 87(2)(b) or § 87(2)(b).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (**Board Review 51**).

PO Clinton said she pushed § 87(2)(b) to get him out of the way of advancing officers. The BWC video shows that § 87(2)(b) was initially compliant in that he was moving away from the officers, but that he stopped walking momentarily immediately prior to the push. The push occurred as the protesters stood in the street alongside vehicular traffic and the audible warning message to disperse was playing. § 87(2)(g)

Allegation (K) Abuse of Authority: Police Officer Jorge Perez threatened New York State § 87(2)(b) with the use of force.

Allegation (L) Force: Police Officer Jorge Perez used pepper spray against New York State § 87(2)(b)

Allegation (M) Force: Police Officer Jessica Clinton used physical force against New York State § 87(2)(b)

Allegation (N) Force: Police Officer Jessica Clinton used pepper spray against New York State § 87(2)(b)

Allegation (O) Abuse of Authority: Police Officer Jessica Clinton threatened New York State § 87(2)(b) **with the use of force.**

A video posted to § 87(2)(b) shows § 87(2)(b) speaking with the reporter (**Board Review 52**). § 87(2)(b) recounts that she was pepper sprayed for no reason while peacefully assembling. She identifies PO Clinton by name and says PO Clinton and PO Clinton's unnamed partner put their fists up to fight § 87(2)(b)

According to the lawsuit filed by § 87(2)(b) and § 87(2)(b) in Federal Court, within seconds of having been attacked by the bicycle officers, a second wave of officers descended on § 87(2)(b). PO Clinton and PO Perez emerged from behind the bicycle officers and "rushed" § 87(2)(b). PO Perez "raised his fists as if to fight" § 87(2)(b). PO Perez then pepper sprayed § 87(2)(b) directly in her eyes (**Board Review 79**).

In PO Clinton's BWC video (**Board Review 04**), at the 16:00 minute mark of the media player timestamp (visible at the bottom of the screen), PO Clinton stands amongst a group of officers who appear to be making arrests and are moving quickly in her vicinity, though specific movements cannot be discerned. At 16:12, PO Clinton is standing in front of § 87(2)(b) identified via the black/white patterned dress she was wearing. The camera is oriented downward and only captures § 87(2)(b)'s legs and the lower portion of her body. § 87(2)(b) moves backwards into a larger group of protesters and disappears from the video. At 17:55, PO Clinton is walking with a prisoner in the street and encounters a crowd of protesters in front of her. PO Clinton gives the individuals numerous verbal commands to "back up." Beginning at 18:12, PO Clinton holds her pepper spray canister, but the video does not capture if she ever uses it. § 87(2)(b) is not visible within the group of protesters surrounding PO Clinton.

The same incident captured in PO Clinton's BWC video is captured from a different angle in the BWC video of PO Lior Chernyhovsky of SRG (**Board Review 18**). At the 16:00 minute mark of the media player timestamp (visible at the bottom of the screen), PO Chernyhovsky stands amongst officers and protesters in the street on Flatbush Avenue. At 16:13, PO Chernyhovsky turns to his left. PO Clinton, a blonde woman wearing a baseball cap, enters the frame and is visible standing in the background behind the officer wearing the green shirt and bicycle helmet who is standing in front of PO Chernyhovsky. PO Clinton walks forward. The protesters in front of PO Clinton are obstructed by the officer wearing the bicycle helmet. At 16:17, § 87(2)(b) (wearing a black and white patterned dress) is visible on the left side of the screen. At 16:19, § 87(2)(b) raises her left arm out in front of her. Immediately after, PO Clinton is briefly captured in front of § 87(2)(b) with her left arm extended toward § 87(2)(b). The camera turns away and to the right. At 16:31, § 87(2)(b) appears in front of PO Chernyhovsky, points, and says, "I need my shoe." An officer next to PO Chernyhovsky picks up a shoe and hands it to her.

PO Perez' BWC video starts with him standing in the street alongside officers and protesters who have been placed under arrest. At the 00:35 minute mark of the media player timestamp (visible at the bottom of the screen), PO Clinton stands ahead of PO Perez. The video does not capture PO Perez, PO Clinton, or any other officer using pepper spray, and it does not show PO Perez or any

other officer raise their fists at § 87(2)(b) or anyone else. At 01:49, § 87(2)(b) is standing behind a bicycle officer and pointing in the direction of PO Perez.

As described above, PO Clinton testified that she pushed protesters who were part of the large violent crowd that the officers were attempting to disperse. When presented with the above described BWC video, PO Clinton described that this corresponded to the portion of the incident when protesters surrounded her and other officers and were pushing her and other nearby officers. The only physical force PO Clinton used against any protester was to push them when they were close to her or when they were pushing her. Seeing the video did not refresh PO Clinton's recollection of § 87(2)(b)'s actions. PO Clinton acknowledged having her hands in front of her and over her head, sometimes open palmed and sometimes in a fist, and she did this solely to protect her head from objects that were being thrown at officers by protesters. PO Clinton acknowledged using her pepper spray against two individuals who pushed her and attempted to pull an arrestee away from her. PO Clinton explained this corresponded to the portion of her video noted above at about the 17:55 minute mark, when she is captured walking with an arrestee toward a prisoner van. PO Clinton denied using her pepper spray against anyone else, including § 87(2)(b).

PO Perez testified that he arrived at the Barclays Center and lined up behind a line of bicycle officers in the street. Shortly thereafter, officers began to arrest protestors in the street who failed to disperse. PO Perez denied using pepper spray against anyone and denied raising his fists toward anyone. He did not see PO Clinton use pepper spray against anyone and did not see any officer raise their fists at any protesters. PO Perez did not see any protester push PO Clinton.

No known video evidence captures PO Perez using pepper spray against any protesters, including § 87(2)(b) or raising his fists at any protesters, including § 87(2)(b).

§ 87(2)(g)

The available video evidence of the interactions between PO Clinton and § 87(2)(b) is brief and does not provide clarity about each person's actions due to the quick movements of the camera. The video appears to show PO Clinton push § 87(2)(b) but it does not capture what happened immediately before or after the push. PO Clinton acknowledged using pepper spray against individuals who were pushing her and interfering with her transport of a prisoner, but she denied using pepper spray against § 87(2)(b) who is not visible in the section of the BWC video which PO Clinton believed corresponds to when she used her pepper spray, and none of the video evidence captured her pepper spraying § 87(2)(b). Finally, PO Clinton acknowledged having her fists raised in front of her at times to protect her head from dangerous objects that were being thrown, § 87(2)(g).

§ 87(2)(g)

Allegation (P) Force: Chief Terence Monahan authorized the striking of individuals with bicycles.

Allegation (Q) Force: Chief Terence Monahan authorized the use of pepper spray against individuals.

Allegation (R) Force: Chief Terence Monahan authorized the use of force against individuals.
Allegation (S) Force: Chief Terence Monahan authorized the use of force against New York State § 87(2)(b)

As discussed above, Chief Monahan testified that following his determination that the assembly was unlawful due to the violence demonstrated by members of the crowd, he ordered SRG to clear the streets adjacent to the Barclays Center (**Board Review 45**). SRG bicycle officers formed a perimeter around the Barclays Center with their bicycles and began dispersing the crowd which was in the street on Flatbush Avenue between Pacific Street and Fifth Avenue. Protesters pushed officers who were ordering the crowd to disperse. Officers pushed back and made numerous arrests. Chief Monahan did not provide specific direction to SRG regarding the use of force or specific tactics. Rather, he said he expected the SRG officers to use their discretion in deciding which of the crowd control tactics they were trained to use to clear the street. These tactics ranged from making arrests to using force, including the use of bicycles to push protesters who refused to disperse. Chief Monahan did not see officers use pepper spray against protesters, and he did not specifically authorize its use against any protesters on Flatbush Avenue. Chief Monahan did not see officers use their bicycles to push any protesters.

As noted above, starting at the 14:40 minute mark of the media player timestamp (visible at the bottom of the screen), PO Kerr's BWC video captures § 87(2)(b) and § 87(2)(b) standing in the street amongst a large group of protesters while a message is being broadcast warning them to disperse or be subject to arrest. An officer with a bicycle approaches them, lifts his bicycle, and pushes it toward § 87(2)(b)'s legs (**Board Review 31**).

Training materials were received from the NYPD Training Bureau related to a bicycle training for the NYPD "bike unit." The final page of the training materials provides information on the use of force. The slides note that the bicycle may be used as an extension of an officer's gun belt. Officers may use their bicycle to defend or protect themselves against a physical threat. The training slides direct officers to follow the provisions outlined in NYPD Patrol Guide series 221 (**Board Review 53**).

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. When appropriate and consistent with personal safety, members of service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In all circumstances, any application or use of force must be reasonable under the circumstances. NYPD Patrol Guide, Procedure 221-01 (**Board Review 51**).

Pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, officers, or other persons. NYPD Patrol Guide, Procedure 221-07 (**Board Review 67**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

The available BWC video shows that § 87(2)(b) and § 87(2)(b) were standing in the street adjacent to the Barclays Center with their arms raised and amongst a large group of protesters, in violation of directives being broadcast to disperse. As described throughout this report, § 87(2)(b) and § 87(2)(b) had encounters with several officers which were brief, occurred during moments of great commotion involving a crowd of protesters and officers, and were either not clearly captured in the available video evidence or were not captured at all. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) are party (**Board Review 54-55**).
- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) are party (**Board Review 84**).
- PO Clinton has been a member of the service for five years and this is the first CCRB complaint to which she has been named as a subject.
- PO Perez has been a member of the service for five years and this is the first CCRB complaint to which he has been named as a subject.
- PO Kovalik has been a member of the service for 12 years and has been named as a subject in one prior CCRB complaint, involving one allegation, which was substantiated. § 87(2)(g)
 - In CCRB 201309377, the Board substantiated an entry allegation against PO Kovalik. The Board recommended Command Discipline and the NYPD imposed Command Discipline A.
- PO Kerr has been a member of the service for four years and has been named as a subject in one prior CCRB complaint comprised of one allegation, which was not substantiated. § 87(2)(g)
 - PO Kerr is also a subject of one entry and one threat of arrest allegation in CCRB 201905717, which is under investigation.
- Chief Monahan was a member of the service for 39 years and has been named as a subject in four prior CCRB complaints comprised of five allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- According to the NYC Office of the Comptroller, no Notice of Claim has been filed regarding the aspects of this incident involving § 87(2)(b) or § 87(2)(b) (**Board Review 56**).
- A lawsuit was filed by § 87(2)(b) and § 87(2)(b) in Federal Court in which they claim excessive force, assault, battery, false arrest and imprisonment, illegal seizure, and violations of the First Amendment regarding free speech. They are seeking

compensatory damages and punitive damages in an amount to be determined at trial and injunctive relief declaring that the Defendant's conduct and policies, practices, and/or customs pursuant to which officers employ excessive force and false arrest, suppress free speech and expression, and retaliate against protesters based on their message, to be unconstitutional (**Board Review 79**).

- As of June 4, 2021, the Office of Court Administration has no record of any convictions for § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b) (**Board Review 57-64**).

Squad No.: 13

Investigator: Rolando Vasquez SI Rolando Vasquez 8/11/21
Signature Print Title & Name Date

Squad Leader: Laura Kastner IM Laura Kastner 08/11/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date